

Montana Water Court
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FILED
04/07/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0796-R-2022
Lambert, Kathryn
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

* * * * *

CLAIMANT: Mary J. Corrigan

CASE 43B-0796-R-2022
43B 213138-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

CLAIM WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

CLAIM FILED LATE 01/10/1989 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

AS OF 02/07/2018 , THIS WATER RIGHT APPEARS TO BE OWNED BY VANCE AND MARY CORRIGAN, 31 FRONTAGE RD E , LIVINGSTON, MT , 59047-9185.

THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL GROWING SEASON FOR THIS CLIMATIC AREA WHICH IS APRIL 15 TO OCTOBER 15.

THE PARK COUNTY WATER RESOURCES SURVEY (1951) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO. 179-66 , DATED 09/15/1979 APPEARS TO INDICATE 14.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

The flow rate, period of use, and maximum acres/place of use issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On December 16, 2022 the Order Updating Caption And Mailing List and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA were entered noting the ownership update from Hui Ranch to Mary J. Corrigan and directing Ms. Corrigan to meet with the Montana Department of Natural Resources and Conservation [“DNRC”] to resolve the issue remarks. On February 9, 2023 the DNRC Memorandum was filed. On February 13, 2023 Ms. Corrigan filed her response agreeing with the changes suggested in the DNRC Memorandum. The requested changes include period of diversion which is not at issue. This request is deemed a motion to amend pursuant to section 85-2-233(6), MCA. The settlement documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. As an ownership update was filed by Mary J. Corrigan, the remark concerning ownership should be removed as now moot.
2. The Preliminary Decree states that the maximum acres irrigated is 40.00 and the place of use in 40.00 acres in the NESW section 29, T1S, R11E, PARK. The maximum acres irrigated should be 23.48 and the place of use should be 23.48 acres in the NESW section 29, T1S, R11E, PARK. The maximum acres/place of use issue remarks should be removed as addressed and resolved.
3. The Preliminary Decree states that the flow rate is 1.52 CFS. The flow rate should be 399.16 GPM. The flow rate issue remark should be removed as addressed and resolved.
4. The change to period of diversion requested in the motion to amend arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

5. The Preliminary Decree states that the period of use and period of diversion are each JANUARY 1 TO DECEMBER 31. They should each be APRIL 15 TO OCTOBER 15. The period of use issue remark should be removed as addressed and resolved.

6. The other remarks provide notice that this is a late-filed claim and that it was not included in the 1985 Temporary Preliminary Decree. These remarks should be removed as having served their notice purposes.

CONCLUSIONS OF LAW

1. As the requested amendment is a reduction in the period of diversion, this amendment does not adversely affect other water rights. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The settlement documentation is sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree and sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the motion to amend this claim and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

Mary J. Corrigan
31 Frontage Rd E
Livingston, MT 9047-9185

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 213138-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: MARY J CORRIGAN
31 FRONTAGE RD EAST
LIVINGSTON, MT 59047 9185

Priority Date: JUNE 29, 1973

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 01/10/1989 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 399.16 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 23.48

Source Name: UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: SURFACE WATER
ALSO KNOWN AS SPRING CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE SW	29	1S	11E	PARK

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	23.48		NESW	29	1S	11E	PARK

Total: 23.48